



Narangwi v Mwambia & 9 others (Environment and Land Miscellaneous Application E20 of 2024) [2024] KEELC 5101 (KLR) (3 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5101 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E20 OF 2024**

CK NZILI, J

JULY 3, 2024

BETWEEN

JOSEPH NTUMBIRI NARANGWI APPLICANT

AND

KENNETH KIMATHI MWAMBIA 1ST RESPONDENT

KALAI SOLOME MALUKI 2ND RESPONDENT

EZEKIEL MWAMBIA M'MWAMBIA 3RD RESPONDENT

ISAIAH MIRITI MWAMBIA 4TH RESPONDENT

JOYCE MWITI KINYA 5TH RESPONDENT

KIARAO KIARAO 6TH RESPONDENT

PAMELA MALEBE 7TH RESPONDENT

JUSTUS MURERWA MAJUNGI MAJOGI 8TH RESPONDENT

**IGEMBE DISTRICT LAND ADJUDICATION AND SETTLEMENT
OFFICER 9TH RESPONDENT**

ATTORNEY GENERAL 10TH RESPONDENT

RULING

1. Section 79 G of the *Civil Procedure Act* grants this court powers to enlarge the time for a filing of an appeal out of time if there are sufficient reasons why the applicant did not file the appeal on time. In *Nicholas Arap Salat v IEBC & others* (2014) eKLR, the court said the extension of time was not a right of a party but a discretionary power that a court exercises on a case-to-case basis, depending on the



length of the delay, the reasons for the delay, prejudice to the opposite party, public interest and the need to do justice to the parties.

2. In the application dated 21.5.2024, the lower court ruling was delivered on 18.4.2024. This application was filed on 22.5.2024. The reason for the delay was that the email of the court was down on time between 15.5.2024 and 18.5.2024. The memorandum of appeal attached is said to raise arguable points to be considered in the intended appeal.
3. The ruling related to a preliminary objection dated 8.11.2023 that sought the trial court to find the respondent's suit as res-judicata, time-barred, and an abuse of the court process. Pleadings and determinations in the former suit alleged to have been determined before the subsequent suit had not been filed alongside the applicant's statement of defense.
4. The trial court rejected the preliminary objection by finding that the suit was not res-judicata. On limitation of time, the trial court said that the issue of when the cause of action based on fraud and conspiracy was a matter of fact to be ventilated at the hearing.
5. In the replying affidavit sworn by Kenneth Kimathi Mwambia on 4.6.2024, the deponent terms the delay of 7 days inordinate and unsubstantiated. The deponent says the applicant has failed to demonstrate exceptional circumstances for the inordinate delay or lack of diligence. Further, the deponent states that no notice of the alleged outage has been annexed to confirm the allegations. Moreover, the deponent avers that the applicant has not shown other attempts or efforts that he made to comply with the law for a whole 30 days; otherwise, the delay was aimed at defeating the cause of justice.
6. Similarly, the deponent avers that the suit at the lower court was at pre-trial stage, the intended appeal lacks merits and equity aids the vigilant and not the indolent.
7. There is no law stating what a maximum or minimum delay is. It all depends on the circumstances of each case, for even a one-day delay could be inordinate.
8. In this application, no notice has been availed to ascertain the alleged downtime of the e-filing system, for the alleged days, the applicant says that he was unable to lodge his documents. Evidence of any attempts to seek assistance from the court registry is lacking.
9. In my view the trial court had the discretion to determine whether the preliminary objection based on res judicata, abuse of court process, or time limitation complied with the principles of what a preliminary objection is in law. Among the reasons given by the trial court was that the applicant had not pleaded or availed awards or decrees in the former suits or adjudication proceedings for the court to find the preliminary objection based on Section 7 of the Civil Procedure Act or sections 4 & 7 of the Limitation of Actions Act applicable.
10. The applicant reserves a chance to ventilate the three issues of his preliminary objection at the main hearing before the trial court. It is not in the interest of justice to extend time. I find the application lacking merits. It is dismissed with costs to the respondents. File closed.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 3RD DAY OF JULY, 2024

HON. C K NZILI

JUDGE

In presence of



C.A Kananu

Njindo for Ngunjiri for the applicant

Ashava for 1st, 2nd and 3rd respondents

